

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
JANICE K. PITTMAN and) Bankruptcy Case No. 99-60427
DALE PITTMAN,)
)
Debtors.)

OPINION

The issue before the Court is whether Creditor, NBD Bank, now known as Bank One, should be sanctioned for the post-petition repossession of Debtors' vehicle in violation of the automatic stay provisions of 11 U.S.C. § 362. Judge Larry Lessen, in In re Martin, Case No. 97-71599 (Bankr. C.D. Ill. 1997), explained the purpose of the automatic stay as follows:

The automatic stay is a basic protection afforded to debtors, and its scope is intended to be broad. Checkers Drive-In Restaurants, Inc. v. Commissioner of Patents and Trademarks, 51 F.3d 1078 (D.C. Cir. 1995), *cert. denied* 116 S.Ct. 182 (1995); Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194 (3d Cir. 1991), *reh'g granted and opinion vacated* (1992), *opinion reinstated on reh'g* (1992), *reh'g denied* (1992); Small Business Administration v. Rinehart, 887 F.2d 165 (8th Cir. 1989); In re Stringer, 847 F.2d 549 (9th Cir. 1988). As soon as the bankruptcy petition is filed, the automatic stay provisions take effect. Matter of Vitreous Steel Products Co., 911 F.2d 1223 (7th Cir. 1990), *reh'g denied* (1990); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522 (2d Cir. 1994). The automatic stay gives the bankruptcy court the opportunity to harmonize the interests of both debtors and creditors while preserving a debtor's assets for repayment and reorganization of his or her obligations. In re Mac Donald, 755 F.2d 715 (9th Cir. 1985). The automatic stay also

serves to protect the debtor's estate from being eaten away by creditors' lawsuits and seizures before the trustee has had an opportunity to marshal the estate's assets and to distribute them equitably among the creditors. In re Nelson, 994 F.2d 42 (1st Cir. 1993). Another fundamental purpose of the automatic stay is to protect the debtor from actions by his creditors. In re Martin, 162 B.R. 710 (Bankr. C.D. Ill. 1993).

The Debtors, Janice K. Pittman and Dale Pittman, filed their Petition for Relief Under Chapter 13 of the Bankruptcy Code on May 17, 1999, thereby triggering the automatic stay. The Debtors were indebted at the time of filing their petition to the Creditor, NBD Bank, now known as Bank One. The Debtors included the subject debt on their petition. The record indicates that the Creditor received notice of the bankruptcy filed by the Debtors and the hearing on the Debtors' Motion for Sanctions, filed on November 15, 1999, and heard by this Court on December 3, 1999. The Creditor did not respond to the Motion for Sanctions and did not appear at the hearing, nor did counsel appear on its behalf. Debtor, Janice K. Pittman, appeared at the hearing, with counsel, and testified.

After hearing the testimony of Debtor, Janice K. Pittman, and reviewing the file, the Court concludes that this is not a complicated matter. The Creditor received notice of the Debtors' bankruptcy, but nonetheless attempted to collect the debt. At approximately 3:00 a.m., on or about July 22, 1999, the Creditor's agent, without relief from the automatic stay, seized the 1992 Mercury Cougar from the Debtors' residence. This was more than two months after the bankruptcy was

filed. The Debtors notified the Creditor's agent about the bankruptcy at the time of the seizure. The automobile was wrecked by the Creditor's agent and was found to be a total loss. The Creditor was reimbursed approximately \$6,750 by its agent's insurer, an amount which was in excess of the debt. As a result, the Debtors were without their vehicle and the Creditor was unjustly enriched. The Debtor, Janice K. Pittman, testified that she notified the Creditor's agent that the Debtors were in bankruptcy and that the automobile could not be seized. The automobile was removed anyway. The Debtor, Janice K. Pittman, was a credible witness. Debtors' attorney made ten to fifteen telephone calls to the Creditor and its agent, but was unable to resolve the matter.

The Court finds by a preponderance of the evidence that the Creditor's conduct resulted in a willful violation of the automatic stay provisions of 11 U.S.C. § 362. Attorney fees are mandatory when there has been a willful violation of the automatic stay. In re Martin, supra, at 6. The Court finds that attorney fees of \$350 are appropriate. In this case, the Debtor notified the Creditor's agent about the bankruptcy. The Debtors were without the use of their automobile. The Debtor, Janice K. Pittman, had to attend the hearing on this matter and testify. The Court finds that the Debtors are entitled to compensatory damages of \$1,200.

In some instances, punitive damages for willful violations of the

automatic stay are appropriate. Judge Larry Lessen, in In re Martin, supra, sets out the standards as follows:

Punitive damages for willful violations of the automatic stay are appropriate where the creditor's conduct is particularly egregious. In re Sumpter, supra 171 B.R. at 845. In determining whether punitive damages are appropriate, the Court looks at (1) the nature of the creditor's conduct, (2) the creditor's ability to pay damages, (3) the creditor's motive, and (4) any provocation by the debtor.

The Creditor acted in bad faith. The nature of the Creditor's conduct was that of defiance. The Creditor in this case seized the automobile with knowledge of the Debtors' bankruptcy. The Creditor appears to have the ability to pay damages. This is a sophisticated creditor with a knowledge of bankruptcy, who took a chance on sanctions in order to seize the automobile. This was a mistake. There is no evidence of provocation by the Debtors. The law is clear that there is an affirmative duty on the part of one who violates the automatic stay to undo the violation without unreasonable delay, or face sanctions as a consequence. In re Martin, supra, at 5. The Court finds that punitive damages of \$1,200 should be assessed against the Creditor.

For the foregoing reasons, the Court finds that the Creditor violated the automatic stay of 11 U.S.C. § 362, and that actual damages of \$1,200, attorney fees of \$350, and punitive damages of \$1,200 should be awarded to the Debtors pursuant to 11 U.S.C. § 362.

This Opinion is to serve as findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

See written Order.

ENTERED: December 9, 1999.

/s/ GERALD D. FINES
United States Bankruptcy Judge